

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Marcus S. McNeal,

Petitioner

v.

Brian Williams, et al.,

Respondents

2:16-cv-01618-JAD-GWF

**Order Granting Application to Proceed
in forma pauperis, Denying Motion for
Appointment of Counsel, and Denying
Motion for Stay**

[ECF Nos. 1, 2, 4]

Nevada state-prison inmate Marcus S. McNeal has filed a § 2254 petition along with a motion to proceed *in forma pauperis*, a motion for appointment of counsel, and a motion to stay these proceedings. I grant the IFP application, deny the motion for appointment of counsel, and deny the motion to stay.

Discussion

Having reviewed the IFP application and supporting documentation, I find that McNeal is unable to pay the filing fee, so I grant the application. As to the motion for appointment of counsel, there is no constitutional right to appointed counsel in federal habeas proceedings,¹ but the district court may appoint counsel when it determines that the “interests of justice” require representation.² McNeal’s petition is sufficiently clear in presenting the issues that he wishes to bring, and these issues are not particularly complex. I therefore find that the interests of justice do not require representation, and I decline to exercise my discretion to appoint counsel.

McNeal has also filed a two-page form motion to stay these proceedings, in which he requests that the court construe the petition as a “protective petition” and stay this case until his state-

¹ *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993).

² 18 U.S.C. § 3006A(2)(B).

1 court matters are resolved. It appears that McNeal's state-court proceedings have concluded,³ so a
 2 protective petition is not appropriate, and McNeal has not otherwise shown that good cause exists
 3 for a stay. I therefore deny without prejudice McNeal's motion to stay.

4 **Conclusion**

5 Accordingly, IT IS HEREBY ORDERED that McNeal's application to proceed *in forma*
 6 *pauperis* [ECF No. 1] is **GRANTED**.

7 IT IS FURTHER ORDERED that McNeal's motion for appointment of counsel [ECF No. 2]
 8 **and motion for stay [ECF No. 4] are DENIED**.

9 IT IS FURTHER ORDERED that the Clerk of Court is directed to FILE and electronically
 10 SERVE the petition on respondents.

11 IT IS FURTHER ORDERED that respondents must respond to the petition by **April 11,**
 12 **2017**. In their response, respondents must address all claims presented in the petition and must raise
 13 all potential affirmative defenses, including lack of exhaustion and procedural default. **Successive**
 14 **motions to dismiss will not be entertained**. Any state-court record exhibits filed by respondents
 15 must be filed with a separate index of exhibits identifying the exhibits by number or letter. The hard
 16 copy of all state-court record exhibits must be forwarded to the staff attorneys in the **Reno** Division
 17 of the Clerk of Court. If an answer is filed, respondents must comply with the requirements of Rule
 18 5 of the Rules Governing Proceedings in the United States District Courts under 28 U.S.C. §2254. If
 19 an answer is filed, McNeal will have 45 days from service of the answer to file a reply.

20 Dated this 1st day of March, 2017.

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 22 _____
 Jennifer A. Dorsey
 United States District Judge

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 25
 26 ³ McNeal's direct appeal concluded on May 13, 2014, and his appeal from the denial of his post-
 27 conviction habeas petition concluded on March 16, 2016. This information was obtained from the
 28 online Nevada Appellate Case Management System.

<http://caseinfo.nvsupremecourt.us/public/publicActorSearch.do> (last visited Feb. 24, 2017).